

LAKE COUNTY BOARD of ADJUSTMENT
October 13, 2010
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Tiffany Lyden, Lita Fonda

Tim McGinnis called the meeting to order at 4:04 pm

Motion made by Sue Laverty, and seconded by Tim McGinnis, to approve the Sept. 8, 2010 meeting minutes. Two in favor of approving the minutes (Sue Laverty, Tim McGinnis) and two abstained (Paul Grinde, Clarence Brazil).

HOBACK DENSITY VARIANCE

LaDana Hintz presented the staff report. (See attachments to minutes in the October 2010 meeting file for staff report.)

Clarence asked if there was an indication of how long the Hobacks considered 'temporary' to be. LaDana said there was not. Sue L asked about the applicants' reference to a temporary sewer system, which could not be, since a system was installed or not. LaDana thought it was phrased that way because they intended to move the trailer off.

LaDana explained the applicants called to say they weren't sure if they could make the meeting. They were not present. Board members thought the variance sounded okay. Paul asked whether it would be reasonable to revisit this, given the temporary part, if it was still there in a year. Tim thought it would be there longer than that. He asked about the septic system, once it was installed. LaDana noted they could have a guest house that complied with the regulations. The Board was reviewing the full-time use of the structure, not that the structure was there. Tim asked what happened if the property was sold and the buyer assumed there were two units. LaDana explained there would be a deed restriction or affidavit that would be recorded so the future owner would know this restriction was on the property.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the variance with staff report, conditions and findings of fact. Motion carried, all in favor.

TERZO SETBACK VARIANCE—MASUMOLA

Tiffany Lyden presented the staff report. (See attachments to minutes in the October 2010 meeting file for staff report.) She corrected #7 on pg. 6 that the covenants were amended in 1974, not 1977. She mentioned that the applicant had brought photos and a proposed covenant amendment signed by the neighbors.

Tony Terzo spoke on behalf of his application. He talked with the fire chief today, whose main concern with the proposal as presented was in case a future neighbor should ask for a similar setback variance. Tony said a change to a 3' setback to the building wall with a 1' overhang plus what it took to put in a 2-hour firewall adjacent to the narrow setback and use fire-resistant materials on the outside would address this. Tim clarified this was a 2' setback taking the eaves into account. Tony agreed this was a 2' ultimate setback. The fire chief wasn't concerned with the overhang. He was concerned with the distance between the walls, the 2-hour fire rating on the wall and the fire-resistant materials. Another issue for the fire chief was at the back end. Where there was a fence, there would be a 3' gate so they could access the back end of the garage. This was another issue for the fire chief. Tony had no problem with that. He wanted to give these modifications to the proposal to the Board.

Tony had other comments and information. He passed around some numbered photos (see MAS 10-04 file.) He described the photos in reference to various sections of the report. The roof height at the ridge would be closer to 10' than to 12'. He wanted the garage and house separate so the eaves would not join in a valley, look odd, and be awkward for drainage. The separation allowed the roof of the house to overlap with separate gutters. He also didn't want to eliminate a window well or build over an underground electrical wire. He didn't want to remove part of the deck and steps and build a retaining wall. He talked about the view in the area, and said he agreed with his neighbor to keep his aspen trees trimmed to help the neighbor's mountain/lake view.

He wanted a 2-car garage. He thought that was standard. To put a garage in front of the house, he would have to remove landscaping and a deck. They'd look right at the garage from the front window and door. People driving by would look at the garage. If he built it with an entrance to the east, he'd still have to take out the deck and landscaping. He might end up with a large, flat deck, which would be the roof of the garage. He didn't think that would look good. If the garage was in the back, it would have to be narrow, there was landscaping back there, and they'd have to drive across the drainfield and the septic tank, even though they didn't know exactly where it was. He didn't think a garage would look good below the house at the SE corner. That could be an option for a replacement drainfield. With another option, regarding maintenance and repair and requiring an easement, he would rather not do that. He thought with moving the setback to 2' to the overhang, he could do maintenance and repair in that space without an easement. Because of the fire recommendations, he would use a metal roof, and snow would be more likely to have snow come off the roof. A snow retainer could be put along the roof near the eave to keep the snow load from sliding off and potentially landing on the other property. He repeated the fire chief's recommendation.

Tim asked Tony to repeat what the fire chief talked about as far as access. Tony described this using his photos. There would be about 2 ½ feet between the house and the garage. The access was a little narrow, but not an issue for the fire chief if there were a gate or opening on the other side of the garage, between the garage and property line. He noted the gate was to keep deer out of the yard, so it would have a simple latch, not a lock. Sue L checked that Tony wanted the gate and the fire chief said he would be okay

with a 3' wide gate. Tony added he mentioned to the chief that staff would probably contact him to get exactly what the chief wanted in technical terms.

Clarence asked how much space to the rear of the lot behind the garage there was. Could a tandem garage, one behind the other, be built? Tony hadn't thought of this. He said it would be another alternative. Tony said he hadn't considered that they were going to landscape that as a shade garden, with a path and water feature. The garage would block it off from view from the street and make it a private area. They would see this from the kitchen and dining room windows. If the tandem garage were his only option, he'd just build a single garage so he wouldn't take out that area. They would rather have the area landscaped than to have a 2-car garage. He also would build a carport rather than a 10' wide garage, since you couldn't open the doors to the first notch on both sides without bumping the doors on the walls.

No public present to comment.

Clarence said he was initially opposed to the 2-car garage in the beginning. Because of the space between the fence and the fire aspect, he was more amenable with the 3' space and the firewall. Sue L said the eaves could be made smaller or eliminated. If he was going to gutter it anyway, the eaves weren't really needed. Clarence described a special gutter that could be built in, as with commercial buildings. Tony said he designed the garage with eaves because he wanted to match the house as much as possible. Paul said the fire chief had no issue with 1' overhangs. Tony understood him to say that he had an issue with the eaves being potentially 2' apart, 1' on each property. With the walls 6' apart, the eaves didn't seem to be as big of an issue, along with the other criteria of access to the back and the 2-hour fire rating. Tony reiterated that this was in the case a building on the next property was built with the same variance. Clarence said eaves could be fireproof by using metal fascia and wrapping the ends of the roof rafters with metal. Tony replied he would use the hardy board for the soffit of the fascia. The hardy product was a cement-type board that could be broken or cut, although it would really dull a saw. It wasn't really structural but could be used for fascia. It was fire-approved.

Tim asked what the staff feeling was if someone asked for another variance. Tiffany replied that there was no guarantee. Her sense was when she did a variance request like this, she looked at the neighboring properties, and pull the zoning files if they were available. Also in the case of this property, if Tony was still there, he would get an adjacent notice.

Sue L expressed a similar thought process as Clarence described. She was inclined to discount a 2-car garage because of the limited space and such closeness to the property line, and thought of a longer, narrower 2-car garage. She thought that was pretty reasonable, whether or not they wanted to have visions of landscaping. That would still protect the cars. A carport, which would be more open, would also protect the cars. Clarence said you couldn't get both vehicles out of the snow. Sue L said if they were one in front of the other, you could.

Paul said it seemed like the place for a garage. If the fire marshal was happy with the 2' building line and 3' to wall line, he thought it was fine. He wasn't much of a fan of long narrow garages. If that was what had to be, then that was what it had to be. He preferred side by side. Tim thought a 2-car garage was a reasonable use for the property, if the fire chief signed off on it and the neighbors okayed it.

Tim wasn't sure how you would deal with the snow going on the neighbor's property and he wasn't sure that was quite addressed. He asked if Tony thought the neighbors would balk at an easement. Tony explained that he just didn't want to do that. He would rather be able to access this on his own property. He hadn't thought about repair. It wouldn't have occurred to him not to let the neighbor on the property to repair his fence, so it didn't occur to him the other way around. Sue L mentioned there was the other issue of snow shed too as far as an easement on his property. If the neighbor had a fence there, the sliding snow might damage the fence.

Clarence explained with a 3/12 pitch, it wouldn't slide much. He owned a commercial building with a 3/12 pitch with a metal roof that they had to shovel. Sue L suggested an easement might protect both landowners. Clarence thought snow would slide slowly, and the owner could shovel it away. Paul mentioned there could be a snow stop on the bottom. Tim clarified for Tony that this Board strove hard to prevent future problems. Clarence recommended putting plywood under the metal roof in case they need to walk on it to shovel it. Tony said he tended to overbuild. He offered to pass around the proposed amendment to the restrictive covenants that the homeowners in the subdivision signed. He reported that no one in the subdivision had comments or concerns.

Tim reiterated he felt a 2-car garage was reasonable, the neighbors agreed and the fire chief agreed. Clarence concurred with what was suggested. Sue L asked about modification. Clarence noted they should specifically say the base of the garage would be 3' from the property line and the eaves would be 2' from the property line, and that it had to be done according to the [inaudible] of the fire chief. Sue L asked about limiting the size of the eaves. Clarence didn't think that was important.

Motion made by Clarence Brazil to grant the variance with the 2' setback and the fire department's recommendations, with further clarification from the fire department, and with the rest of the staff recommendations.

Tim clarified with Tiffany about the criteria. Tiffany thought the Board would need to modify the criteria prior to a vote. Tim suggested saying the two alternatives did not offer a reasonable use of the property. Tiffany said that they were finding that A.2 was met, and also B.2. A.1 was the one that said if he couldn't construct a garage, that would be a hardship. She referred to pgs. 8 and 9. Tiffany recapped that the Board was saying for A.1 that if the applicant could not construct a 2-car garage that this would be a hardship. Tim replied that a 2-car garage was a reasonable use of the property, and not being able to do that was a hardship, and that there was no alternative location on the lot. For A.2, Tiffany said the Board was saying there was no reasonable alternatives that existed that met the standards. She said A.3 should be met with whatever variance the

Board required. B.1 was met, and B.2 was fairly similar to A.1. B.5 was the last of the four she identified as needing adjustment. If they found a proposed two-car garage was reasonable, this would be the minimum relief necessary and the criteria would be met. Tim said they found that a two-car garage was a reasonable use.

Sue L asked how to modify the setback from the original request. Tim thought the variance they were granting was a 2' setback. Tiffany said it would be a modified or alternative variance, and mentioned alternative three as the applicant proposed. Sue L suggested the motion be more specific: the setback variance as developed by the fire department for the walls to be 3'. If the Board says a variance for 2' and he then had no eaves, it would be there. Tim summarized that alternative variance #3 was a 2' setback with the walls being set back 3'. Clarence said the foundation of the walls should be set back 3'. Tiffany checked that the findings would be modified as just discussed. Tim confirmed.

Tiffany checked if there were modifications to the conditions (pg. 12). Tim asked if the condition regarding the fire chief was in there. He pointed to the discussion on pg. 7 in #17, and suggested adding the condition that the applicant request comment from the local fire department regarding potential structural spacing between adjacent lots, and give the Planning Dept. staff discretion to address any comments of the fire department, prior to permitting. Tiffany suggested the building height in #3 might need modification, since the applicant spoke of a 10' height. Tony said he didn't calculate the height exactly. It would be closer to 10' than to 12'. Tim noted the condition said a maximum of 12'. The applicant agreed this was okay.

Motion seconded by Paul Grinde.

Content of setback motion summarized: a 2' setback from the eaves, and a 3' setback from the walls, with more clarification from the fire department as per the bottom of pg. 7, and with the other Planning Dept. recommendations, and modified findings of facts and staff report.

Motion carried, all in favor.

BOARD OF ADJUSTMENT RULES

Joel Nelson presented a memo and attachments about the Board of Adjustment rules. (See attachments to minutes in the October 2010 meeting file for staff report.)

Sue L asked about under 'Powers', in the sentence after 1.c, if the language should read 'reverse or affirm' rather than 'reverse of affirm'. Joel corrected this accordingly. On pg. 3 in xii, Sue L noted that it said the Chairperson 'shall' allow for motions. She thought the Board had changes this to 'may'. Was there a reason? Joel said at some point this needed to happen.

On the final page in #6, Sue L observed 6.b and 6.c had changed quite a bit since the first draft. She asked about those. Joel said he used the attorney's office suggestions on

those. The Board discussed 6.b and 6.c with an example of a 2-2 vote with 4 members present. Joel said the rules clarified that lacking a concurring vote of 3, an item didn't pass. If one or more members were absent, then the Board may table the matter. Paul summarized that if an item got a 2-2 vote, it was denied. If someone on the Board wanted to table it, and the motion passed 3 to 1, then the first vote was negated and the item was taken up at the next meeting. Joel said the only thing not specifically covered, was if all 5 members of the Board were here, and 3 concurring votes were not received, typically the Board would postpone or deny.

Tim asked what happened if a vote on an item was 2 to 2, and a vote to table split 2 to 2. Joel said that would be under 6.c. Sue L explored that. If a vote tonight was 2 to 2, the Board could say the item was denied. After the vote the Board could then say to table it until there was a full Board? Clarence thought not. Sue L said that was how 6.c read. 6.b said if you didn't get 3 votes it was dead. She thought 6.c could open it up, so that if the Board said an item was dead, the applicant might say they wanted the item tabled or postponed until there was a full Board. Joel thought 6.c was covered in 6.b. Clarence said it was often that they didn't have a full board, so that could go on forever. Sue L thought 6.c didn't need to be there, or else should be rewritten. She gave an example of potential language. She and Joel agreed that 6.c could be eliminated. The scenarios covered by 6.c were also covered by 6.b.

Joel asked the Board if they wanted to adopt and sign the rules tonight. It would be nice to have the Mike's signature, which could come later if a favorable vote on the rules was achieved. The Board was in favor of signing tonight.

Motion made by Sue Laverty, and seconded by Paul Grinde, to adopt the proposed Board of Adjustment rules with the correction to the typo discussed above (changing 'reverse of affirm' to 'reverse or affirm' in the first sentence following after 1.c on pg. 1) and striking 6.c. Motion carried, all in favor.

OTHER BUSINESS

None. The Board waited for the new BOA rules to be prepared for signing.

Meeting adjourned at approximately 5:55 pm.